

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MALIBU TEXTILES, INC.,	:
	:
Plaintiff,	:
	:
- against -	:
	:
CAROL ANDERSON, INC. and CABI, LLC,	:
	:
Defendants.	:
	:
-----X	

Case No: 07CIV4780 (SAS)  
Judge Scheindlin

**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS,**  
**CAROL ANDERSON, INC. & CABI, LLC, TO PLAINTIFF'S**  
**SECOND AMENDED COMPLAINT**

DEFENDANTS, Carol Anderson, Inc. and CABI, LLC (collectively, the "Defendants"), by and through their undersigned counsel, LAZARUS & LAZARUS, P.C., as and for their Answer and Affirmative Defenses to the First Amended Complaint (the "Complaint") of Plaintiff, Malibu Textiles, Inc. ( the "Plaintiff"), respectfully set forth, represent and allege as follows:

1. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 1, insofar as the same alleges the nature of Plaintiff's action, except refer to the Complaint for the best evidence thereof, and further, and in any event, deny any act, conduct or omission on Defendants' part giving rise to a claim, cause of action or

remedy to Plaintiff for, on account of, or related to the laws, rules and statutes referenced therein for the content thereof.

2. Defendants deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 2, except admit that from time to time representatives of Plaintiff and Defendants have met in contemplation of or for the purpose of transacting business, and further deny knowledge or information sufficient to form a belief as to such matters as alleged to have been learned by Plaintiff.

3. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 3, except refers to the Complaint and the laws, rules and statutes referenced therein for the content thereof.

4. Without admitting liability, or any contested fact or issue in connection therewith, Defendants admit the allegations of paragraph 4, except respectfully refer to the laws, rules and statutes referenced therein for the content thereof.

5. Without admitting liability, or any contested fact or issue in connection therewith, Defendants admit the allegations of paragraph 5, except respectfully refer to the laws, rules and statutes referenced therein for the content thereof.

6. Without admitting liability, or any contested fact or issue in connection therewith, Defendants admit the allegations of paragraph 6, except respectfully refer to the laws, rules and statutes referenced therein for the content thereof.

7. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 7.

8. Defendants admit the allegations of Paragraph 8 of the Complaint.

9. Defendants admit the allegations of Paragraph 9 of the Complaint.

10. Without admitting liability, or any contested fact or issue in connection therewith, Defendants admit the allegations of paragraph 10, except respectfully reserve the right to amend, modify, or supplement this admission if, as and when the specific facts, circumstances and matters relevant herein require such amendment, modification, or supplementation so as to more fully and completely respond to the general nature of the allegations pleaded.

11. Defendants deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 11.

12. Defendants deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 12, except admit that Defendants transact business within this district and derive revenue from intrastate and interstate commerce.

13. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and

numbered 13.

14. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 14.

15. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 15, except refer to Exhibit A to the Complaint for the content thereof.

16. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 16 except refer to Exhibit B to the Complaint for the content thereof.

17. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 17.

18. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 18, except refer to Exhibit C to the Complaint for the content thereof.

19. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 19, except refer to Exhibit D to the Complaint for the content thereof.

20. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 20, except refer to Exhibit E to the Complaint for the content thereof.

21. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 21, except refer to Exhibit F to the Complaint for the content thereof.

22. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 22, except refer to Exhibit G to the Complaint for the content thereof.

23. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 23, except refer t Exhibit H to the Complaint for the content thereof.

24. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 24. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 24.

25. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 25.

26. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 26, except refer to Exhibit I to the Complaint for the content thereof.

27. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 27, except refer to Exhibit J to the Complaint for the content thereof.

28. Defendants plead to each and every allegation set forth in the paragraph of the Complaint marked and numbered 28 by referring to the books, records, and documents evidencing the sales subject of said paragraph for the content and substance thereof.

29. Defendants deny so much of the allegations set forth in the paragraph of the Complaint marked and numbered 29 as, directly or indirectly, allege an infringement of copyright or other wrongful conduct as to Plaintiff, except admit that from time to time representatives of Plaintiff and Defendants met, at which meetings samples were shown.

30. Defendants deny so much of the allegations set forth in the paragraph of the Complaint marked and numbered 30 as, directly or indirectly, allege an

infringement of copyright or other wrongful conduct as to Plaintiff, except admit that from time to time representatives of Plaintiff and Defendants met, at which meetings samples were shown.

31. Defendants plead to each and every allegation set forth in the paragraph of the Complaint marked and numbered 31 by referring to the books, records, and documents evidencing the sales subject of said paragraph for the content and substance thereof.

32. Defendants deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 32.

33. Defendants admit the allegations set forth in the paragraph of the Complaint marked and numbered 33, except, in any event, deny any act, conduct or omission on Defendants' part giving rise to a claim, cause of action or remedy to Plaintiff.

34. Defendants deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 34, except refer to Exhibit K to the Complaint for the content and substance thereof.

35. Defendants deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 35 insofar as the same alleges any, conduct or omission on the part of Defendants giving rise to a claim, cause of action or remedy to

Plaintiff, and otherwise refer to website referenced therein for the content thereof.

36. Defendants plead to each and every allegation set forth in the paragraph of the Complaint marked and numbered 36 by referring to letters referenced therein for the content thereof, except deny any act, conduct or omission on the part of Defendants giving rise to a claim, cause of action or liability to Plaintiff herein.

37. Defendants deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 37.

38. Defendants deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 38.

39. Defendant's deny knowledge or information sufficient to form a belief as to so much of the allegations of paragraph 39 of the Complaint as alleges that which Plaintiff learned, and deny any act, conduct or omission on Defendants' part giving rise to a claim, cause of action or remedy to Plaintiff.

40. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 40 of the Complaint, except refer to the books, records and documents evidencing the purchase set forth therein for the content thereof.

41. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 41 insofar as the said paragraph alleges that which Plaintiff learned, except,

in any event, deny any act, conduct or omission on Defendants' part giving rise to a claim, cause of action or remedy to Plaintiff.

42. Defendants deny each and every allegations set forth in the paragraph of the Complaint marked and numbered 42.

43. Defendants plead to each and every allegation set forth in the paragraph of the Complaint marked and numbered 43 by repeating, realleging, and incorporating by reference each prior and subsequent paragraph hereof, records, and documents evidencing the sales subject of said paragraph for the content and substance thereof.

44. Defendants deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 44.

45. Defendants deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 45 insofar as the same set sets forth a legal conclusion.

46. Defendants deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 46.

47. Defendants deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 47.

48. Defendants deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 48.

49. Defendants deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 49.

50. Defendants deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 50.

**FIRST AFFIRMATIVE DEFENSE**

51. The Complaint fails to state a cause of action upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

52. The Copyrighted Works are insufficiently original to warrant protection under the Copyright laws of the United States.

**THIRD AFFIRMATIVE DEFENSE**

53. The Plaintiff's claims must fail because, upon information and belief, the Defendants' works of art were independently created.

**FOURTH AFFIRMATIVE DEFENSE**

54. The Plaintiff's claims must fail because the works of art subject hereof are not substantially similar.

**FIFTH AFFIRMATIVE DEFENSE**

55. Plaintiff's claims must fail because Plaintiff is not properly the owner or author of one or more of the copyrights in question or the works of art subject thereof.

WHEREFORE, Defendants, Carol Anderson, Inc. and CABI, LLC respectfully demand judgment dismissing Plaintiff's Complaint in its entirety, and for such other, further and different relief as this Court deems just, adequate and proper.

Respectfully submitted this 9<sup>th</sup> day of April, 2008.

**LAZARUS & LAZARUS, P.C.**

*Attorneys for Defendants*

By: \_\_\_\_\_

**HARLAN M. LAZARUS, ESQ. (HML-0268)**

240 Madison Avenue, 8<sup>th</sup> Floor

New York, New York 10016

**To: COWAN, DEBAETS, ABRAHAM & SHEPPARD LLP.**

41 Madison Avenue, 34<sup>th</sup> Floor

New York City, New York 10010

**Attention: NANCY E. WOLFF, ESQ.**

**MATTHEW A. KAPLAN, ESQ.**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MALIBU TEXTILES, INC.

Plaintiff,

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SECOND AMENDED COMPLAINT**

LAZARUS & LAZARUS, P.C.  
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240 Madison Avenue, 8<sup>th</sup> Floor  
New York, New York 10016  
Tel. (212) 889-7400

To

Service of a copy of the within is hereby admitted.

Dated:.....

Attorney(s) for